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10A 2981

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

SHIGERU HATAKENAKA

Serial No: 09/618,306

Filed: July 18, 2000

For: VINEGAR USING SEA WATER AND SEASONING THEREOF

Art Unit: 1761

Examiner: Curtis E. Sherrer

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FEB 21 2003
TC 1700

PETITION TO WITHDRAW ABANDONMENT OF APPLICATION

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicant respectfully submits that the above-identified application is not abandoned and requests that the Notice of Abandonment issued January 23, 2003 be withdraw based upon the facts as set forth below as follows:

1. On May 24, 2002, an Office Action was issued rejecting all the claims 1-6 of the above-identified application;
2. In the Office Action dated May 24, 2002, the Examiner stated: "said vinegar is not claimed with respect to its chemical or physical makeup, but rather by the method in which it is produced" and Applicant interpreted this language to be that the Examiner was unclear whether or not the claims were directed to a product or a method of producing the product and as a result filed an Amendment on August 22, 2002 to clarify the claims by making them purely method;
3. On December 17, 2002, the Examiner issued a communication stating that Applicant's submission of August 22, 2002 was not responsive because Applicant is now claiming a different invention. A copy of that Notice is attached hereto. In the Notice, it stated:
"Since the above-mentioned reply appears to be *bona fide*, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.
EXTENSION OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR

1.136(a).”

4. Because the Notice was received on December 23, 2002, and the fact that Applicant is located in Japan, the undersigned had difficulty in securing instructions from Applicant in a timely manner because of the Christmas and New Years holidays and the time and distance differences between the U.S. and Japan before January 17, 2003;

5. As a result, the undersigned was not able to respond to the Notice from the Examiner within the one-month period;

6. Since the statutory period to respond to the Office Action of May 24, 2002 has expired on November 24, 2002 and the communication from the Examiner was dated December 17, 2002, it was the undersigned’s opinion that any statutory period to respond to the Office Action of May 24, 2002 had expired and as a result, the one-month period set forth by the Examiner was now a new period to respond which was not statutory and was therefore extendible for up to five months under the provisions of 37 CFR 1.136(a) as stated in the communication from the Examiner;

7. As a result of the above, the undersigned was surprised to receive the Notice indicating that the application had abandoned for failing to respond within one-month;

8. As a result of the undersigned’s surprise, the undersigned called the Assistant Commissioner’s Office and spoke with one of the Assistant Commissioner representatives who agreed with the undersigned’s opinion and stated that pursuant to MPEP 7.14.03 and 37 CFR 1.135(c), the one-month time period set forth by the Examiner was in fact a new time period which could be extended for up to five months under the provisions of 37 CFR 1.136(a);

9. In accordance with 37 CFR 1.181(a), attached hereto is the appropriate response to the Notice from the Examiner, namely a request for one-month extension of time and a request for filing of a divisional application under 37 CFR 1.53(d).

In view of the above and pursuant to 37 CFR 1.181, Applicant respectfully requests that the Commissioner withdraw the Notice of Abandonment dated January 23, 2003, accept Applicant’s request for one-month extension of time and enter Applicant’s non-provisional divisional application.


The undersigned further declares that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the

like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

It is further respectfully requested that any petition fee which may be required by this Petition be charged to Koda & Androlia Deposit Account No. 11-1445.

In the event that this petition is not granted, it is further respectfully requested that the application be revived under 37 CFR 1.137(b) as being unintentionally allowed to lapse and the fee for such unintentional abandonment be charged to Koda & Androlia Deposit Account No. 11-1445.

Respectfully submitted,
KODA AND ANDROLIA

By: 
William L. Androlia
Reg. No. 27, 177

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Suite 3850
Los Angeles, CA 90067
Tel: (310) 277-1391
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FOR

THIS MATTER FORWARDED

1/17/03

KODA & ANDROLIA



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/618,306 | 07/18/2000 | Shigeru Hatakenaka | 10A 2981 | 9513 |

7590 12/17/2002

KODA AND ANDROLIA
2029 CENTURY PARK EAST
SUITE 3850
LOS ANGELES, CA 90067-3024

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DEC 23 2002

KODA & ANDROLIA

EXAMINER

SHERRER, CURTIS EDWARD

| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 12/17/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
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| 09/618,306 | 07/18/00 | Hatakenaka, Shigeru | 10A 2981 |
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| EXAMINER | |
|------------|--------------|
| C. Sherrer | |
| ART UNIT | PAPER NUMBER |
| 1761 | 20 |

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

The reply filed on 08/22/02 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Applicants are now claiming a different invention. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The fax phone number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Curtis E. Sherrer
Primary Examiner
December 17, 2002



I hereby certify that this correspondence is being deposited with the United States Postal

Service as Express Mail No. EL954006584US addressed to:

Commissioner for Patents
Washington, D.C. 20231
Box: CPA

on February 14, 2003 by Inja Yi.

Dated: 2/14/03

By: Inja Yi

10A 2981 DIV

MORI

Applicant:

SHIGERU HATAKENAKA

For:

VINEGAR USING SEA WATER AND SEASONING THEREOF